



Federal Communications Commission
Washington, D.C. 20554

DA 05-1951

July 6, 2005

Mr. Ameer Flippin
2053 Wilson Road
Memphis, TN 38116

Re: Auction No. 59: Multiple Address Systems

Dear Mr. Flippin:

This letter responds to your: (1) filings made in an attempt to participate in Auction No. 59, which were received in the Commission's Gettysburg office on June 13, 2005;¹ and (2) email transmissions sent by you to several Commission staff on June 16, 2005 concerning applications filed by winning bidders.² By virtue of these submissions, you seek to become an Auction No. 59 applicant and to deny "all long-form applications of opposing entities which placed bids less than or equal to in value of bids placed by Ameer Flippin."³ For the reasons set forth below, we dismiss the Application and deny the Motion and Petition.

¹ This package included: FCC Forms 601 and 602, Round 125 Auction No. 59 bids, and an "Ex-Parte Motion And Petition For Waiver Of All Payments Due Upon The Filing of Long Form 601, At The Close Of Auction # 59, Pending Approval Of Installment Payments" (hereinafter referred to as "Application").

² This series of emails included: (1) Ex-Parte Motion and Petition to Deny Against All Long-Form Applications of Opposing Entities which Placed Bids Less Than or Equal To In Value of Bids Placed by Ameer Flippin, an Individual, In Auction #59, Multiple Address Systems, In Accordance with 47 C.F.R. 1.2108; Attached Listing of Long Form Applicants Being Motioned to Deny; by Pro Se Bidder, Ameer Flippin; (2) Affidavit In Support of the Ex-Parte Motion and Petition to Deny Against All Long-Form Applications of Opposing Entities which Placed Bids Less Than or Equal To In Value of Bids Placed by Ameer Flippin, an Individual, In Auction #59, Multiple Address Systems, In Accordance with 47 C.F.R. 1.2108; Attached Listing of Long Form Applicants Being Motioned to Deny; by Pro Se Bidder, Ameer Flippin; and (3) Ex-Parte Motion and Petition for "Installment Payments," As Similarly Prescribed in 47 C.F.R. 1.2110(g) With Various Waivers, On All Licenses Where Ameer Flippin was the High Bidder in Auction #59, By Pro Se Bidder, Ameer Flippin (hereinafter referred to as "Motion and Petition").

³ *Motion and Petition* at 1. You also state that a memorandum in support of your motion for "installment payments" upon "petition for review" will be filed at the Commission, and in the U.S. Circuit Court of Appeals for the District of Columbia. *Id.* At this writing, the Commission has received neither such filings nor notice of such filings. We also note, however, that this Circuit Court recently has determined that your filings relating to FCC Auction No. 58 were frivolous. *See In re Ameer Flippin*, No. 05-1026 (D.C. Cir. June 10, 2005) (ordering that petitions for review "be dismissed as frivolous").

Application. By letter of May 12, 2005, the Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau denied your previous request to submit a short-form application for Auction No. 59.⁴ You were therefore neither a participant⁵ nor a winning bidder⁶ in Auction No. 59.⁷ Your subsequent attempt to gain entry into Auction No. 59, as set forth in the Application, did not entitle you to participate in the auction. The Application is not permitted under the Commission's rules for the reasons previously articulated.⁸

Motion and Petition. As you were neither a participant nor a winning bidder, you lack standing to file a petition to deny license applications submitted by winning bidders in Auction No. 59.⁹ Your lack of standing justifies dismissal of the Motion and Petition as submitted. Even if you had standing, however, we note that your Motion and Petition was not timely filed nor adequately supported in accordance with a Public Notice establishing pleading cycles for challenges to successful bidders in Auction No. 59.¹⁰

⁴ See Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC, to Ameer Flippin, DA 05-1282 (rel. May 12, 2005) (*May 12 Michaels Letter*) (denying Flippin email requests for reconsideration of, and extensions of time in which to comply with, the short-form application and down payment deadlines for Auction No. 59).

⁵ For the list of applicants that applied to participate in and were found qualified to participate in Auction No. 59, see Auction of Multiple Address Systems Spectrum, Status of FCC Form 175 Applications to Participate in Auction No. 59, *Public Notice*, 20 FCC Rcd 5937 (2005); Multiple Address Systems Spectrum Auction, 31 Bidders Qualified to Participate in Auction No. 59, *Public Notice*, 20 FCC Rcd 7924 (2005).

⁶ See Multiple Address Systems Spectrum Auction Closes, Winning Bidders Announced for Auction No. 59, *Public Notice*, DA 05-1392 (rel. May 25, 2005).

⁷ We note that the Mobility Division of the Wireless Telecommunications Bureau made a similar determination that you were neither a participant nor a winning bidder in Auction No. 58. See Letter from Michael A. Ferrante, Associate Chief, Mobility Division, Wireless Telecommunications Bureau, FCC, to Ameer Flippin, DA 05-1343, at 1 (rel. May 12, 2005) (*May 12 Ferrante Letter*) (“[s]ince you were not a participant and not a high bidder, your attempt to file an FCC Form 601 is improper, and the purported Form 601 filing is dismissed.”).

⁸ See *id.* See also *May 12 Michaels Letter*, n.4, *supra*.

⁹ See, e.g., Applications of Alaska Native Wireless, L.L.C., *Order*, 18 FCC Rcd 11640, 11644-45 paras. 10-11 (2003) (“an entity that was not qualified to bid in particular markets in an auction has no standing to file a petition to deny the winning bidders’ applications in those markets.”) (citing *High Plains Wireless L.P. v. FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002)).

¹⁰ Section 1.2108(b) of the Commission’s Rules states, in relevant part:

(b) Within a period specified by Public Notice and *after the Commission by Public Notice announces that long-form applications have been accepted for filing*, petitions to deny such applications may be filed. ... Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

47 C.F.R. § 1.2108(b) (emphasis added). We note that the requirement that factual allegations be supported by affidavit from a person or persons with personal knowledge is mandated by statute. See 47 U.S.C. § 309(d)(1).

Furthermore, the Motion and Petition does not set forth factual circumstances that might justify waiver of these requirements. A request for waiver of the Commission's rules must include a complete explanation of why a waiver is desired.¹¹ The Commission's rules require that such an explanation establish that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application in the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative.¹² You have not addressed, much less satisfied, these standards for grant of a waiver, either in the petition for waiver of payments set forth in the Application, or in the subsequent Motion and Petition challenging the winning bidders.¹³

The broad purposes of the standing and procedural requirements in the auction process, whether applied to an initial short-form application, a subsequent long-form application, or to challenges to winning bidders' applications, ensure that auctions proceed in a timely, predictable and equitable fashion, in furtherance of statutory goals of efficient and expeditious licensing of spectrum.¹⁴ You have provided no reason why these broad statutory goals would be frustrated by denial of your requests. To the contrary, when we consider the considerable disruption of Auction No. 59 that would be caused by belatedly considering your bids or your petitions on such an unsubstantiated basis, and the potential disruption of other auctions that might be challenged by entities or individuals that similarly lack standing and have not complied with procedural requirements, we conclude that the public interest in continuing to assure auction participants reasonable certainty regarding consistent application of our auction rules and procedures outweighs your unsupported assertions.

Accordingly, we dismiss your purported Application, received in the Commission's Gettysburg office on June 13, 2005, and deny in all respects the Motion and Petition transmitted by email on June 16, 2005. Furthermore, we find that the expense of time and resources to address what appear to be frivolous arguments is a detriment to the public interest.¹⁵

¹¹ See *May 12 Michaels Letter* at 2. See also Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Ameer Flippin, DA 05-173 (rel. Jan. 25, 2005) (denying Flippin requests for extensions of time to file a short-form application and to make an upfront payment for Auction No. 58, as well as for a 180-day postponement of the auction).

¹² See 47 C.F.R. § 1.925(b)(3). Additionally, the Commission may grant a waiver upon a showing of good cause. See 47 C.F.R. § 1.3.

¹³ You make only general and unsupported assertions that have no apparent relation to the grant of other applicants' applications, see Motion and Petition at 4, and which fall far short of the statutory requirement that petitions to deny be based on factual particulars supported by an affidavit of person(s) with personal knowledge. See n.10, *supra*.

¹⁴ See 47 U.S.C. § 309(j)(3).

¹⁵ See *In re Ameer Flippin*, n.3, *supra*. Under the Commission's rules, a filing may be deemed frivolous if there is no "good ground to support it." See Commission Taking Tough Measures against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

Mr. Ameer Flippin
July 5, 2005
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This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Jeffrey S. Cohen
Deputy Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau